

**Village of Irvington
Zoning Board of Appeals**

Minutes of Meeting held September 23, 2003

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, September 23, 2003, in the Trustees Meeting Room, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Paul M. Giddins
George Rowe
Robert Myers

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.

The minutes of the July, 2003 meeting were approved.

There were 10 matters on the agenda (4 continued matters and 6 new matters):

Continued Matters

Case No.

2002-29 Ruth Nicodemus and C.M. Pateman & Associates – Mountain Road
(Sheet 11, Lot P27K)

The Applicant appeared with his Charles Pateman as contract vendee.

The matter was adjourned to the October 28, 2003 meeting allow the applicant to appear before the Planning Board with respect to site plan approval and for the board to consider watershed amelioration.

John Ellwin appeared in opposition to the application and requested notice of the procedural decisions made by the Planning Board.

2003-18 Dennis and Cynthia Haines – 3 Hudson Road East (Sheet 15, Lot P121)

The Applicant appeared. Bill Horowitz, a neighbor of the Applicant, appeared in favor of the application.

The Applicant seeks a variance from § 224-51 of the Irvington Zoning Ordinance (the “Code”), seeking to continue a stockade fence within the Broadway Buffer.

The Chairman noted that this matter was continued from the June 23, 2003 meeting, which followed the Supreme Court’s annulment of the Board’s October 23, 2002 decision denying the Applicant’s request for a variance, for lack of an adequate record of its proceedings. At the June 23 meeting, the reviewed drawings and photographs submitted by the Applicant, and examined each of the criteria set forth in New York State Village Law § 7-712b(3)(b) for the determination of an area variance. At the conclusion of the June 23 meeting, the Board adjourned the matter to permit its members to consider the matter further.

Prior to this September 23 meeting, the Applicant submitted a statement from a principal of J & J Contractors, which described the company as a landscaping concern and stated that the installation of new vegetation in place of the fence at issue would “likely” suffer the same outcome as the existing arborvitae. The Applicant also

submitted additional photographs showing dead or dying arborvitae in the vicinity of the fence.

The Board noted that the additional evidence submitted by the Applicant addressed one of the five § 7-712b(3)(b) criteria, namely, whether the benefit sought could be achieved by some method, feasible to pursue, other than an area variance. The Board noted that the additional evidence submitted by the Applicant did not resolve the foregoing issue in the Applicant's favor, since the Board had obtained other information indicating that some vegetation screening could survive, as reflected in the minutes of the June 23, 2003 hearing.

The Board concluded, based upon the record of the June 23 hearing, as well as the additional evidence adduced at this hearing, that the Applicant's fence produced an undesirable change in the character of the neighborhood, defining the neighborhood as the length of Broadway, because it produced a tunneling effect that denigrated the spacious, tree-lined character of the Broadway corridor. The Board further concluded that the requested variance was substantial, in that the fence cut off two thirds of the Broadway Buffer, and that the difficulty giving rise to the request for a variance was self-created.

The Applicant noted that the Board had granted a request in the *Paul* matter to vary the requirements of § 224-51 to permit the construction of a fence perpendicular to Broadway and within the Broadway Buffer. The Chairman responded that the Board did not consider a perpendicular fence to be precedent for allowing a fence parallel to Broadway within the Broadway Buffer.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to deny the request for a variance to permit the continuance of a fence within the Broadway Buffer.

2003-21 DeNardo Development Corp – Erie Street – Roland Avenue (Sheet 15, Lot P123A)

The Applicant appeared with his attorney Norman Shearer.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-7A and 224-89A(1) of the Code, relating to existing non-conforming uses, so as to permit the partial demolition, construction and renovation of a single family residence.

The Board reviewed drawings submitted by the Applicant and noted that the lot in question is in a District wherein the zoning was changed in or about 1988, from 1F-20 to 1F-40. According to the site plan submitted by the Applicant, after removing an existing house, the Applicant plans to construct a single family residence that conforms to all of the set back and coverage requirements for both 1F 20 and 1F 40 Districts and, in addition, conforms to the Floor Area Ratio ("FAR") requirements of the newly enacted Ordinance Article XXII. Under these circumstances the Board concluded that a variance from the cited provisions was warranted.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance from the provisions of §§ 224-7A and 224-89A1 of the Code, to permit construction of a one family residence on the lot in question in accordance with the site plan submitted at the hearing and made a part of the record herein, and on condition that the FAR of the completed structure comply with Article XXII's FAR requirements.

2003-27 James Lundy and Martha Chamberland – 31 East Clinton Avenue
(Sheet 14, Block 223, Lots 15 and 15A)

The Applicant appeared with his attorney Richard Blancato and his engineer.

The Applicant sought a variance from the provisions of § 224-10 of the Code to permit a site capacity determination of two single-family dwelling units. The Village engineer also appeared and filed his report with respect to the application. The matter was adjourned for the Applicant to respond to the Village Engineer's report.

New Matters

2003-28 Eric and Michelle Frank – 23 Washington Avenue (Sheet 15; Lot P101)

The Applicant appeared by his architect Michael Jellin.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought variances from the provisions of §§ 224-13 (coverage) and 224-11 (set backs) of the Code, to permit the construction of a pool house.

The Board reviewed drawings submitted by the Applicant and noted that the degree of intrusion into the side yard set back, four feet, four inches, was small, and that to move the pool house closer to the pool to remove it from the set back would create an eight foot divide between the pool house and the edge of the existing pool, which is too narrow a space to be traversed safely by persons using the pool. The Board further noted that reducing the size of the pool house itself, so as to remove it from the set back, would result in a structure too small to be usable for the purpose intended.

The Board also noted that the Applicant's plans call for a 777 square foot increase in the existing coverage, which is a 16% increase over the existing coverage. The Board concluded that, under the circumstances of this case, the excess coverage is not prohibitive per se. When added to the existing coverage, the increase produces a total excess coverage of 2,146 square feet, or 44% over the allowable coverage of 4849 square feet. It was noted, however, that a large portion of the excess is attributable to pervious surfaces such as walkways, and that these surfaces blend into the landscape and do not produce the detrimental visible characteristics produced by impervious surfaces or by buildings. For this reason, the Board discounted the otherwise large numbers produced by the coverage calculations.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and

welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, and that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

Two of the Applicant's neighbors appeared in opposition to the application. One neighbor stated her objection to be that the Code should not be varied for a "frivolous" purpose such as a pool house. The Board noted in response that New York State case law has held that in determining an area variance, the use to which the residential addition is to be put is irrelevant. The Board also noted that reducing the size of, or moving, the pool house would not materially change its effect on nearby properties but would materially and adversely affect the benefit sought by the applicant.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

2003-29 **Ante and Sylvia Marusic** – 60 Hudson Avenue (Sheet 10B; Block 230; Lot 22C)

The Applicants appeared.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-13 (coverage) of the Code, to permit the construction of a patio.

Neighbors of the Applicants appeared and objected to the lack of information in the application regarding proposed lighting on the patio. The Board noted that it would also like more detail concerning the proposed lighting on the patio. The matter was adjourned to the October 28 meeting for the Applicants to provide more details concerning the proposed lighting of the patio.

2003-30 David Rosner – 11 Meadow Way (Sheet 10F; Block 253; Lot 12)

The Applicant appeared with his architect Tosas Kokorus.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-11 (set backs), 224-14 (third bay in garage) and 224-34 (height in stories) of the Code, to permit the construction of a new house. Applicants neighbors John Reilly and Ed Pastucha appeared in favor of the application. Mr. Pastucha, who lives directly across the street from the Applicant's lot, noted that the Applicant's planned house was precisely the way he had hoped the lot would be developed.

The Board reviewed drawings submitted by the Applicant and noted that the set back intrusion occurs because the lot's northeastern boundary line was treated by the Planning Board as a continuation of the rear yard lot line that faces southeast, thus

requiring a 35 foot setback, rather than being treated as a side yard, requiring only a 15 foot setback. The Board concluded that the northeastern lot line could be treated as a side yard, which it appeared to be, without adverse effect on the neighborhood or on the adjoining property, particularly because the adjoining property on that side of the lot consists of a large, unbuildable open space that is part of the Fieldpoint development.

The Board further noted that the need for a height variance occurred because the house is to be built on a slope, as a result of which its downhill side will be three stories high while its uphill side will be two stories high. The Board concluded that because of the topography in this case, a variance could be granted without creating an excessively tall structure of three stories, as would occur on flat land, and thus without adverse affect on neighboring properties or on the character of the neighborhood.

The Board also concluded that a three bay garage would not adversely affect the character of the neighborhood because the lot is approximately one and one-half acres, far in excess of the half-acre minimum required for the 1F 20 district in which it is located. The Chairman noted that a three bay garage is prohibited in 1F 10 and 20 districts presumably because it results in too large an auxiliary structure for half acre lots, a consideration that does not apply to this large lot. The Chairman further noted that the newly-enacted § 224-14 permits three bay garages in 1F 40 and 60 districts, in either of which the Applicant's lot would be conforming.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood

or a detriment to nearby properties, and that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance from the provisions of §§ 224-11, 224-14 and 224-34 of the Code, to permit the construction of a new house.

2003-31 Meredith and Andrew Siegel – 10 Greyrock Terrace (Sheet 10D; Block 242; Lots 21 and 22)

The Applicants appeared.

The Applicants did not file the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, or the applicable proofs of service.

The matter was adjourned to the October 28, 2003 meeting.

2003-32 Lorie and Charles Levy – 2 Hudson Road West (Sheet 8; Block 219; Lots 27 and 27A)

The Applicants appeared.

The Applicants did not file the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, or the applicable proofs of service.

The matter was adjourned to the October 28, 2003 meeting.

2003-33 Risa Wells-Person – 42 Ardsley Avenue East (Sheet 15; Lot P129)

The Applicant appeared.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of § 181-2 (sprinklers) of the Code, to permit the construction of an addition to the existing house on the lot in question, without installing sprinklers in the house or addition.

The Board reviewed letters from an environmental risk company and from the Applicant's physician, stating that the installation of sprinklers within the Applicant's home would produce "chemical exposures" to the Applicant and that such exposures would place the Applicant at a "significant" health risk due to a long standing sensitivity to such exposures. The Board concluded that these health considerations clearly outweighed any potential detriment to the neighborhood or community that might flow from the proposed addition, which itself does not violate any provision of the Code other than the aforesaid sprinkler provision.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the

variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, and that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance from the provisions of § 181-2 of the Code to permit the construction of an addition to the existing house without the addition of sprinklers.

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins
Paul M. Giddins